

REMARKS

In the Official Action mailed on November 17, 2005, the Examiner rejected claims 1, 3-10, 12-16, 18-23 and 39-44, and objected to claims 2, 11 and 17. Applicants thank the Examiner for allowance of claims 24-38 and for indicating the allowable matter in claims 2, 11, and 17.

Rejections Under 35 U.S.C. § 102

The Examiner rejected claims 1, 3, 5, 8-10, 13, 14, 16, 18, and 23 under 35 U.S.C. § 102(b) as being anticipated by Constien (U.S. Pat. No. 6,259,932). Specifically, with respect to the independent claims, the Examiner stated:

Regarding claims 1 and 8, Constien discloses a computer system (see Figs 3-4), comprising: a chassis (housing/member 2) that encloses at least one microprocessor (personal computer, col. 6, lines 14-46), the chassis or member having a rear wall (rear panel of member 2) which faces away from a user during normal use; and an elector-acoustic transducer or driver (speaker 6) mounted in the chassis and wherein the speaker is mounted to the rear wall (see col. 3, lines 42-48 and col. 6, lines 13-14). The personal computer of member 2 would have inherently including a 'sound card' for processing input and output audio signals.

Regarding claim 10, the personal computer of 2 would have inherently including RAM for read/write functioning of the microprocessor.

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Claims 16, 18 and 23 are similar to claims 1, 3 and 5 except for being couched in method terminology; such methods would be inherent when the structure is shown in the references.

Office Action, pages 3-4

Applicants respectfully traverse this rejection. Anticipation under 35 U.S.C. § 102 can be found only if a single reference shows exactly what is claimed. *Titanium Metals Corp. v. Banner*, 778 F.2d 775, 227 U.S.P.Q. 773 (Fed. Cir. 1985). For a prior art reference to anticipate under Section 102, every element of the claimed invention must be identically shown in a single reference. *In re Bond*, 910 F.2d 831, 15 U.S.P.Q.2d 1566 (Fed. Cir. 1990).

To maintain a proper rejection under Section 102, a single reference must teach each and every element or step of the rejected claim. *Atlas Powder v. E.I. du Pont*, 750 F.2d 1569 (Fed. Cir. 1984). Thus, if the claims contain even one recitation not found in the cited reference, the reference does not anticipate the claimed subject matter.

As amended, independent claim 1 recites, *inter alia*, “a chassis that encloses at least one *microprocessor*, said chassis having *a rear wall with an outer face which faces away and opposite from a user during normal use*; and an *electro-acoustic transducer ... mounted to said rear wall*.” (Emphasis added). Amended independent claim 10 recites, *inter alia*, “a main system module which includes therein: at least one *microprocessor* ... said main system module being mounted in a chassis which has *a rear wall having an outer face which faces away and opposite from a user in normal use*; and *a driver ... mounted to said rear wall*.” (Emphasis added). Amended independent claim 16 recites, *inter alia*, “one or more programmable *processors* contained within a chassis, said chassis having *a rear wall with an outer face which faces away and opposite from a user during normal use*, wherein said driver is mounted in said rear wall.” (Emphasis added).

Applicants respectfully submit that the Constien reference fails to disclose each and every feature of independent claims 1, 10, and 16. For example, the Constien reference fails to disclose a driver mounted to a rear wall of a chassis storing a processor, wherein the rear wall has “an outer face which faces away and opposite from a user in normal use,” as recited in claims 1, 10, and 16.

The Constien reference discloses a portable device that can be used as a personal computer and/or telephone. *See* Constien, col. 1, lines 11-13. The device described in the Constien reference includes three members which are linked together. *See id.*, col. 6, lines 7-

21. A first member, referred to as member 1, contains a telecommunication unit, telephone keys 5, and a telephone display 4. *See id.* A second member, referred to as member 2, contains a personal computer and a slot for receiving cards (e.g., magnetic cards or cards of the PCMCIA standard). *See id.* A third member, referred to as member 3, has an accumulator which supplies energy. *See id.*

The device described by the Constien reference includes a speaker 6 and a microphone that are situated on one of either member 1 or member 2. *See Constien, col. 7, lines 9-21.* Member 1 of the device is merely described as including a “telecommunication unit.” *See Constien, col. 6, lines 11-15 and col. 7, lines 9-21.* The Constien reference does not indicate that the telecommunication unit includes any form of processor. Indeed, the telecommunication unit apparently does not include such a processor or processors because it uses the computer in member 2 to perform processing functions. *See Constien, col. 6, lines 52-65.* Accordingly, member 2 does not include “at least one microprocessor,” as recited by claims 1 and 10, or “one or more programmable processors,” as recited by claim 16. Thus, when the speaker 6 is disposed on member 1, it is not mounted to a chassis including a processor, as required by claims 1, 10, and 16. Further, the Constien reference certainly does not disclose such a chassis having a driver mounted to a rear wall of the chassis, wherein the rear wall has “an outer face which faces away and opposite from a user in normal use,” as recited in claims 1, 10, and 16.

When the speaker 6 is situated on member 2, which contains a personal computer, it is not mounted to a rear wall of a chassis storing a processor, wherein the rear wall has “*an outer face which faces away and opposite from a user in normal use,*” as recited in claims 1, 10, and 16. (Emphasis added). The speaker 6 is used as an earpiece when the device is operating as a telephone and as a speaker when the device is operating as a personal

computer. *See* Constien, col. 7, lines 41-45. As illustrated by Figs. 1, 4, and 6, when the device is being used as a telephone, the speaker (i.e., earpiece) is disposed on a *front* portion of the device that will clearly *face a user* during use as a telephone. Alternatively, when the device is used as a personal computer, the speaker 6 is *facing down* with respect to the user, as illustrated in Fig. 5, rather than away and opposite from a user. Accordingly, the Constien reference does not disclose the speaker 6 mounted to a rear wall of a chassis, wherein the rear wall has “an outer face which faces *away and opposite from a user in normal use*,” as required by independent claims 1, 10, and 16.

In view of the deficiencies of the Constien reference as set forth in the remarks above, Applicants respectfully request withdrawal of the Examiner’s rejection and allowance of amended independent claims 1, 10 and 16. Further, in view of their respective dependencies and based on unique matter recited in each dependent claim, Applicants request that the Examiner withdraw the rejection of dependent claims 3, 5, 8, 9, 13, 14, 18, and 23.

Rejections Under 35 U.S.C. § 103

The Examiner rejected claims 20 and 21 under 35 U.S.C. § 103(a) as being unpatentable over the Constien reference in view of Koyama et al. (U.S. Pat. No. 5,581,621). Further, the Examiner rejected claims 7, 15, and 39-43 under 35 U.S.C. § 103(a) as being unpatentable over the Constien reference in view of well known prior art. Additionally, the Examiner rejected claims 6, 12, 19 and 44 under 35 U.S.C. § 103(a) as being unpatentable over the Constien reference in view of well known prior art. Finally, the Examiner rejected claims 4 and 22 under 35 U.S.C. § 103(a) as being unpatentable over the Constien reference in view of Burleson et al. (U.S. Pat. No. 6,522,763).

Applicants respectfully traverse this rejection. The burden of establishing a *prima facie* case of obviousness falls on the Examiner. *Ex parte Wolters and Kuypers*, 214 U.S.P.Q. 735 (Bd. Pat. App. & Inter. 1979). Obviousness cannot be established by combining the teachings of the prior art to produce the claimed invention absent some teaching or suggestion supporting the combination. *ACS Hospital Systems, Inc. v. Montefiore Hospital*, 732 F.2d 1572, 1577, 221 U.S.P.Q. 929, 933 (Fed. Cir. 1984). Accordingly, to establish a *prima facie* case, the Examiner must not only show that the combination includes *all* of the claimed elements, but also a convincing line of reason as to why one of ordinary skill in the art would have found the claimed invention to have been obvious in light of the teachings of the references. *Ex parte Clapp*, 227 U.S.P.Q. 972 (Bd. Pat. App. & Inter. 1985).

The Examiner rejected claims 20 and 21 under 35 U.S.C. § 103(a) as being unpatentable over the Constien reference in view of the Koyama et al. reference. Applicants respectfully traverse this rejection. The Examiner relied on the Constien reference for its alleged teaching of “one or more programmable *processors* contained within a chassis, said chassis having *a rear wall with an outer face which faces away and opposite from a user during normal use*, wherein said *driver is mounted in said rear wall*,” as recited in claim 16 from which claims 20 and 21 depend. The Examiner cited the Koyama et al. reference for its alleged teaching of a “programmable equalizer for automatically adjusting the frequency response and amplifier gains.” Office Action, page 5. However, the Koyama et al. reference does not obviate the deficiencies of the Constien reference discussed above. Indeed, in view of the deficiencies discussed above with reference to independent claim 16, the Applicants respectfully request withdrawal of the rejection of claims 20 and 21 under 35 U.S.C. § 103.

The Examiner rejected claims 7, 15, and 39-43 under 35 U.S.C. § 103(a) as being unpatentable over the Constien reference in view of well known prior art. Applicants respectfully traverse this rejection. The Examiner relied on the Constien reference for its alleged teaching of features of claims 1 and 10 from which claims 7 and 15 respectively depend. Further, the Examiner relied on the Constien reference for its alleged teaching of “a computer chassis; and a driver mounted in said chassis to a rear wall thereof with said driver facing away and opposite from a user during normal use,” as recited in claim 39. The Examiner cited well known prior art for its alleged teaching of a “long throw speaker or driver.” Office Action, page 5. However, this allegedly well known prior art does not obviate the deficiencies of the Constien reference discussed above. In view of the deficiencies discussed above with reference to independent claims 1 and 10, and which apply to features of independent claim 39, the Applicants respectfully request withdrawal of the rejection of claims 7, 15, and 39-43 under 35 U.S.C. § 103.

The Examiner rejected claims 6, 12, 19, and 44 under 35 U.S.C. § 103(a) as being unpatentable over the Constien reference in view of well known prior art. Applicants respectfully traverse this rejection. The Examiner apparently relied on the Constien reference for its alleged teaching of features of claims 1, 10, 16, and 39 from which claims 6, 12, 19, and 44 respectively depend. The Examiner cited well known prior art for its alleged teaching of a speaker or driver with a range of 0.65 to 0.8 quality factor. *See* Office Action, page 6. However, this allegedly well known prior art does not obviate the deficiencies of the Constien reference discussed above. Accordingly, in view of the deficiencies discussed above with reference to independent claims 1, 10, 16, and which apply to features of independent claim 39, the Applicants respectfully request withdrawal of the rejection of claims 7, 15, and 39-43 under 35 U.S.C. § 103.

With regard to the rejection of claims 6, 12, 19, and 44, Applicants also respectfully assert that the Examiner has essentially taken Official Notice of facts outside of the record that the Examiner apparently believes are capable of demonstration as being “well-known” in the art. Therefore, in accordance with M.P.E.P. § 2144.03, the Applicants hereby seasonably traverse and challenge the Examiner’s use of Official Notice. Furthermore, Applicants emphasize that the “well-known” facts asserted by the Examiner are *not of a “notorious character”* and are clearly *not “capable of such instant and unquestionable demonstration as to defy dispute.”* See M.P.E.P § 2144.03. Specifically, the Applicants respectfully request that the Examiner produce evidence in support of the Examiner’s position as soon as practicable during prosecution and that the Examiner add a reference to any future rejection. If the Examiner finds such a reference and applies it in combination with the presently cited references, the Applicants further request that the Examiner specifically identify the portion of the newly cited reference that discloses the allegedly “well known” elements of the instant claim, as discussed above, or withdraw the rejection.

The Examiner rejected claims 4 and 22 under 35 U.S.C. § 103(a) as being unpatentable over the Constien reference in view of Burleson et al. Applicants respectfully traverse this rejection. The Examiner apparently relied on the Constien reference for its alleged teaching of features of claims 1 and 16 from which claims 4 and 22 respectively depend. The Examiner cited the Burleson et al. reference for its alleged disclosure of a “computer housing including frontal perforations for acoustic output improvement.” Office Action, page 6. However, this does not obviate the deficiencies of the Constien reference discussed above with respect to claims 1 and 16. Accordingly, in view of the deficiencies discussed above with reference to independent claims 1 and 16 the Applicants respectfully request withdrawal of the rejection of claims 4 and 22 under 35 U.S.C. § 103.

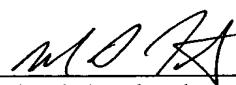
In view of the remarks set forth above, Applicants respectfully request withdrawal of the Examiner's rejection and allowance of claims 4, 6, 7, 12, 15, 19, 20-22, and 39-44.

Conclusion

In view of the remarks and amendments set forth above, Applicants respectfully request withdrawal of the Examiner's rejections and allowance of claims 1-23 and 39-44. If the Examiner believes that a telephonic interview will help speed this application toward issuance, the Examiner is invited to contact the undersigned at the telephone number listed below.

Respectfully submitted,

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